



**US Army Corps
of Engineers**

Albuquerque District
4101 Jefferson Plaza NE
Albuquerque, NM 87109-3435
Fax No. 505-342-3498

Road Exemption Summary

FARM, FOREST, OR TEMPORARY MINING ROADS

Pursuant to Section 404 of the Clean Water Act (33 USC 1344) and Federal Regulations (33 CFR 323.4), certain discharges have been exempted from requiring a Section 404 permit. Included in this exemption is construction or maintenance of farm roads, forest roads, or temporary roads for moving mining equipment. To meet this exemption, such roads must be constructed and maintained in accordance with the best management practices (BMPs) to assure that flow and circulation patterns and chemical and biological characteristics of waters of the United States are not impaired, that the reach of the waters of the United States is not reduced, and that any adverse effect on the aquatic environment will be otherwise minimized.

The following best management practices must be followed in order for the activity to be exempted from requiring a permit:

(1) Permanent roads (for farming or forestry activities), temporary access roads (for mining, forestry, or farm purposes) and skid trails (for logging) in waters of the U.S. shall be held to the minimum feasible number, width, and total length consistent with the purpose of specific farming, silvicultural or mining operations, and local topographic and climatic conditions.

(2) All roads, temporary or permanent, shall be located sufficiently far from streams or other water bodies (except for portions of such roads which must cross water bodies) to minimize discharges of dredged or fill material into waters of the U.S.

(3) The fill shall be bridged, culverted, or otherwise designed to prevent the restriction of expected flood flows.

(4) The road fill shall be properly stabilized and maintained during and following construction to prevent erosion.

(5) Discharges of dredged or fill material into waters of the United States to construct a road fill shall be made in a manner that minimizes the encroachment of trucks, tractors, bulldozers, or other heavy equipment within waters of the U.S. (including adjacent wetlands) that lie outside the lateral boundaries of the fill itself.

(6) In designing, constructing, and maintaining roads, vegetative disturbance in the waters of the U.S. shall be kept to a minimum.

(7) The design, construction, and maintenance of the road crossing shall not disrupt the migration or other movement of those species of aquatic life inhabiting the water body.

(8) Borrow material shall be taken from upland sources whenever feasible.

(9) The discharge shall not take, or jeopardize the continued existence of, a threatened or endangered species as defined under the Endangered Species Act, or adversely modify or destroy the critical habitat of such species.

(10) Discharges into breeding and nesting areas for migratory waterfowl, spawning areas, and wetlands shall be avoided if practical alternatives exist.

(11) The discharge shall not be located in the proximity of a public water supply intake.

(12) The discharge shall not occur in areas of concentrated shellfish production.

(13) The discharge shall not occur in a component of the National Wild and Scenic River System.

(14) The discharge of material shall consist of suitable material free from toxic pollutants in toxic amounts.

(15) All temporary fills shall be removed in their entirety and the area restored to its original elevation.

A Section 404 permit is required if either of the following occurs:

(1) Any discharge of dredged or fill material resulting from the above activities which contains any toxic pollutant listed under Section 307 of the Clean Water Act shall be subject to any applicable toxic effluent standard or prohibition, and shall require a permit.

(2) Any discharge of dredged or fill material into waters of the United States incidental to the above activities must have a permit if it is part of an activity whose purpose is to convert an area of the waters of the United States into a use to which it was not previously subject, where the flow or circulation of waters of the United States may be impaired or the reach of such waters reduced. Where the proposed discharge will result in significant discernible alterations to flow or circulation, the presumption is that flow or circulation may be impaired by such alteration. For example, a permit will be required for the conversion of a Section 404 wetland from silvicultural to agricultural use when there is a discharge of dredged or fill material into waters of the United States in conjunction with construction of dikes, drainage ditches, or other works or structures used to effect such conversion. A discharge which elevates the bottom of waters of the United States without converting it to dry land does not thereby reduce the reach of, but may alter the flow or circulation of, waters of the United States.

If the proposed discharge satisfies all of the above restrictions and BMPs, it is automatically exempted and no further permit action from the Corps of Engineers is required. If any of the restrictions or BMPs of this exemption will not be complied with, an individual permit is required and should be requested using ENG Form 4345 (Application for a Department of the Army permit). A nationwide permit authorized by the Clean Water Act may be available for the proposed work. State or local approval of the work may also be required.

For additional information concerning exemptions, nationwide permits, or for a written determination regarding a specific project, please contact the Corps at the following addresses:

In New Mexico:

Albuquerque District Corps of Engineers
ATTN: Regulatory Branch
4101 Jefferson Plaza, NE
Albuquerque, New Mexico 87109-3435
Phone: (505) 342-3283

In southeastern Colorado:

Southern Colorado Regulatory Office
720 North Main Street, Room 300
Pueblo, Colorado 81003-3047
Phone: (719) 543-9459

In southern New Mexico and western Texas:

El Paso Regulatory Office
P.O. Box 6096
Ft. Bliss, Texas 79906-0096
Phone: (915) 568-1359